

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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JUN 13 1997

Federal Communications Commission
Office of Secretary

In the Matter of)

Advanced Television Systems)
and Their Impact Upon the)
Existing Television Broadcast)
Service)

MM Docket No. 87-268

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To: The Commission

PETITION FOR RECONSIDERATION

KVOA Communications, Inc., licensee of Television Station KVOA(TV), Tucson, Arizona ("KVOA"), by its attorneys, and pursuant to 47 C.F.R. § 1.429(a) (1996), hereby petitions the FCC for reconsideration of its Sixth Report and Order in the above-captioned proceeding¹ for the reasons described below.

I. Introduction.

KVOA fully supports the principles underlying the Commission's DTV Table of Allotments as released in the Sixth R&O. Replication of existing NTSC service areas and minimization of interference are essential to the success and full implementation of digital television ("DTV"). Although the Commission may have achieved these goals with respect to the majority of television broadcasters in the United States, KVOA's DTV assignment places it among the minority of broadcasters who, in the words of Broadcasting & Cable, got "the short end of the transmitter"² and are now facing a drastic reduction in their service

¹Sixth Report and Order, MM Docket No. 87-268, FCC 97-116 (released April 21, 1997) ("Sixth R&O").

²Broadcasting & Cable at 4-5 (Apr. 28, 1997).

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areas. KVOA urges the Commission to reconsider its DTV channel assignment and if necessary reevaluate the overall assignment criteria that has produced such disparate results for this and other similarly-situated stations.

II. The Commission Must Reconsider KVOA's DTV Channel Assignment And If Necessary the DTV Allotment Methodology.

In the Sixth R&O, the Commission emphasized that one of its primary goals in establishing the DTV allotments was to ensure that a television station's DTV assignment would replicate its existing service area. In addition, the Commission wanted to ensure that stations would be able to compete effectively within local markets. Specifically, the Commission stated that:

We believe that providing DTV allotments that replicate the service areas of existing stations offers important benefits for both viewers and broadcasters. This approach will ensure that broadcasters have the ability to reach audiences that they now serve and that viewers have access to the stations that they can now receive over-the-air. . . . [W]e believe that it is important to adopt an approach that provides for a high degree of service replication by all stations, while at the same time ensuring that all stations are able to provide DTV service competitively within their respective markets.

Sixth R&O ¶¶ 29, 30 (emphasis added). These words ring hollow for KVOA. With the parameters established for KVOA's DTV operation on Channel 31, KVOA's DTV coverage will replicate only 81.6% of its current NTSC coverage area. Surely, the Commission does not believe that a 20% reduction in coverage represents a "high degree" of service replication. Such a drastic reduction also handicaps KVOA competitively. Eighty percent replication simply does not allow KVOA to provide a competitive DTV service in the Tucson market when three other TV stations in the market will achieve 100% replication, two others will achieve over 95% replication and the sixth station will have 89.6% replication. See id.

Appendix A, Table 1 at B-9. What is clear is that the Commission has not achieved its goals of ensuring service replication and competitive DTV service for all stations. Reconsideration of KVOA's DTV allotment as well as the allotment methodology which produced this result is therefore warranted.

III. The Commission Must Provide Broadcasters An Opportunity To Comment on OET Bulletin No. 69.

In requesting reconsideration of its DTV channel assignment and operating parameters, KVOA would like to be able to propose an alternate allotment, different power level or a specific change to the allotment methodology that would allow the Commission to correct its error. However, in order to evaluate fully KVOA's assignment and possible alternative assignments, KVOA must have the methodology required to make these calculations. But the critical piece of information necessary for stations to evaluate contours—*OET Bulletin No. 69*—has not been timely released though the Sixth R&O refers to it numerous times. Without *OET Bulletin No. 69*, it is impossible, for example, for stations to know precisely what operating parameters for the Longley-Rice methodology apply or what amount of interference is considered *de minimis*. In turn, it is impossible for stations to know how to assess the reasonableness of either their own DTV allotment or those of nearby licensees. Moreover, broadcasters are ill equipped to verify whether the DTV Table meets *any* standard of adequacy, much less whether it achieves the goals of service replication and minimal interference as the Commission contends.³

³As a matter of administrative law, the Commission must, of course, set forth the basis and underlying support for its rules in a manner that is sufficiently detailed to permit judicial review. See, e.g., National Nutritional Foods Association v. Weinberger, 512 F.2d 688, 701 (2d. Cir. 1975), cert. denied, 423 U.S. 827 (1975).

Therefore, before the rules and the DTV Table become final -- but *after* the Commission's methodology is made available -- the Commission should give interested parties a further opportunity to comment on the Table and the methodology. A brief additional comment period of 90 days will not significantly delay implementation of the transition to DTV. Indeed, to the extent that there are problems with the DTV Table, the Commission can correct those problems more efficiently and expeditiously if they are identified in a further round of comments while this proceeding remains open rather than if such issues are raised in a plethora of separate petitions for rulemaking filed after the DTV Table becomes final.

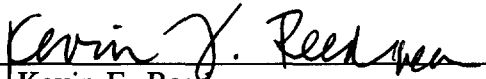
IV. Conclusion.

KVOA is well aware that the transition to DTV will involve uncertainties and require flexibility on the part of all broadcasters. Nonetheless, if the Commission's goals in implementing DTV are to ensure that all broadcasters have a high degree of service replication and can compete effectively with other stations in the same market, the Commission needs to make good on this promise for all stations including KVOA from the very beginning. The Commission not only needs to release OET Bulletin No. 69 before the DTV Table and rules are finalized so that broadcasters can make complete evaluations of DTV service, but it also must reconsider KVOA's particular DTV channel assignment and to the extent necessary retool its assignment methodology to ensure this station's ability to replicate NTSC service and compete with other Tucson stations.

Based upon the foregoing, KVOA requests reconsideration of the Commission's Sixth
R&O in this proceeding.

Respectfully submitted,

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